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Attorneys for Defendant The Del-Nat Tire Company

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

INTER-CITY TIRE & AUTO CENTER, INC., Plaintiff, vs. THE DEL-NAT TIRE CORPORATION, Defendant.	CIVIL CASE NO.: 15-cv-02852-SDW-SCM ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS OF DEFENDANT THE DEL-NAT CORPORATION TO COMPLAINT
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Defendant The Del-Nat Tire Corporation (“Defendant” or “Del-Nat”), by and through undersigned counsel, for its Answer to Plaintiff’s Complaint for Declaratory Judgment (“Complaint”), states as follows:

NATURE OF ACTION

1. The allegations in Paragraph 1 state legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 1 of Plaintiff's Complaint.

FACTUAL BACKGROUND

2. Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. Defendant admits the allegations contained in Paragraph 3 of Plaintiff's Complaint.

4. Defendant admits the allegations contained in Paragraph 4 of Plaintiff's Complaint.

5. As to the allegations in Paragraph 5, Defendant admits that attached to the Complaint are documents labeled Exhibit A, and that Exhibit A consists of certain debentures issued by Defendant to Plaintiff (the "Debentures"). By way of further answer, Defendant states that the Debentures and any other attached documents speak for itself and any attempt by Plaintiff to recharacterize, restate, explain, or state legal conclusions pursuant to the attached document is denied. By way of further answer, Bank denies every other allegation contained in Paragraph 5 of the Complaint.

6. Paragraph 6 of the Complaint states legal conclusions and legal arguments to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained in Paragraph 6 of the Complaint.

7. Defendant states that the Debenture terms speaks for themselves and any attempt by Plaintiff to recharacterize, restate, explain, or state legal conclusions pursuant

to the Debentures is denied. By way of further answer, Defendant denies every other allegation contained in Paragraph 7 of the Complaint.

8. Defendant admits that the sum of \$261,177.74 is owed to Plaintiff under the Debentures as alleged in Paragraph 8 of the Complaint.

9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. The allegations in Paragraph 10 state legal arguments and legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 10 of Plaintiff's Complaint.

COUNT I
(Declaratory Judgment)

11. Defendant restates and realleges its responses to paragraphs 1-10 of Plaintiff's Complaint as more fully set forth herein.

12. The allegations in Paragraph 12 state legal arguments and legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 10 of Plaintiff's Complaint.

13. The allegations in Paragraph 13 state legal arguments and legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 13 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

Defendant, by and through its counsel, for its Affirmative Defenses, states and alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The Petition fails to state a claim upon which relief can be granted as Plaintiff fails to allege facts sufficient to establish each and every element necessary to its causes of action.

SECOND AFFIRMATIVE DEFENSE

Pursuant to the terms of the Debentures, Del-Nat has, in its sole discretion, the right to redeem the Debentures prior to their maturity dates.

THIRD AFFIRMATIVE DEFENSE

The Debentures do not contain any provisions permitting Plaintiff to demand that Del-Nat repurchase the Debentures or in any form, whether by cash, credit or offset.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver, estoppel, and unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend and allege other affirmative defenses which are revealed during the course of discovery in this proceeding.

WHEREFORE, Defendant, The Del-Nat Tire Corporation, seeks the entry of an order dismissing Plaintiff's Complaint for Declaratory Judgment against Defendant, and for such other and further relief as the Court deems just and proper.

COUNTERCLAIM

Del-Nat, by and through counsel, by and for its Counterclaim against Inter-City Tire & Auto Center, Inc. ("Inter-City"), states as follows:

1. Del-Nat, a foreign corporation incorporated under the laws of Nevada, has its principal place of business in the State of Tennessee and is a citizen of the State of Tennessee.

2. Inter-City is corporation with its principal place of business in the State of New Jersey and is a citizen of the State of New Jersey.

3. Inter-City placed and Del-Nat accepted purchase orders for the purchase of vehicle tires, reasonably valued in the amount of \$132,047.55. True copies of the purchase orders and Account Statement are attached hereto as Exhibit A {the “Purchase Orders”}.

4. Inter-City accepted delivery of the tires from Del-Nat pursuant to the Purchase Orders.

5. Each of the Purchase Orders accepted by Del Nat constitute legally enforceable contracts.

6. Under the payment terms of the Purchase Orders, payment in full was due within 60 days from the date the orders were invoiced.

7. A finance charge of 12.00% APR (annual percentage rate) is assessed to any outstanding balance owed to Del-Nat for the goods purchased.

8. In addition, \$1200 in dues owed by Inter-City in connection with being a member of The Del- Nat Tire cooperative ownership group has been assessed.

9 As of March 12, 2015, and after all appropriate credits and payments, the outstanding principal balance owed by Inter-City to Del-Nat was \$132,047.55.

10. On March 12, 2015 Del-Nat made demand for payment upon Inter-City for the amounts owed, and Inter-City has refused to pay the amounts owed. See Demand Letter attached hereto as Exhibit B.

11. The Debentures issued to Inter-City permit Del-Nat to withhold any payments under the Debentures absent payment of the amounts owed by Inter-City to Del-Nat.

WHEREFORE, Defendant, The Del-Nat Tire Corporation, seeks entry of an order granting judgment in favor of The Del-Nat Tire Corporation and against Inter-City Tire & Auto Center, Inc. in the sum of \$132,047.55, together with interest at the rate of 13% per annum, from and after March 12, 2015, and for such other and further relief as the Court deems just and proper.

DATED: May 21, 2015

Respectfully submitted,

FREEDMAN LAW, LLC

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**Attorneys for Defendant
The Del-Nat Tire Corporation**

CERTIFICATE OF SERVICE

I hereby certify a true copy of the foregoing was served via CM/ECF on May 21, 2015, to the following:

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DATED: May 21, 2015

EXHIBIT A